

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

PROVO RESERVOIR COMPANY, a
corporation,

Plaintiff,

vs.

PROVO CITY, A MUNICIPAL
CORPORATION; T. F. WENTZ,
Commissioner, THE PROVO BENCH
CANAL & IRRIGATION COMPANY;
THE UPPER EAST UNION IRRIGATION
COMPANY; THE TIMPANOGOS CANAL
COMPANY; THE WEST UNION CANAL
COMPANY; THE EAST RIVER BOTTOM
WATER COMPANY; THE LITTLE DRY
CREEK IRRIGATION COMPANY; THE
LAKE BOTTOM CANAL COMPANY, et al,

Defendants.

2882
D E M U R R E R

Come now ~~Provo City, a Municipal Corporation,~~
~~T. F. Wentz, Commissioner,~~ The Provo Bench Canal &
Irrigation Company, The Upper East Union Irrigation
Company, The Timpanogos Canal Company, The West Union
Canal Company, The East River Bottom Water Company,
The Little Dry Creek Irrigation Company, and The
Lake Bottom Canal Company, defendants in the above
entitled cause, and demur to the petition of the
plaintiff on file herein, and as grounds of demurrer
allege:

1. That the petition does not state or allege
facts sufficient to constitute a cause of action, or
sufficient facts to entitle the plaintiff to the relief
prayed for in said petition, or to any relief whatsoever,
or at all.

2. No facts are alleged in said petition from which
it can be ascertained or determined what amount of stored
water, if any, the plaintiff had in its reservoir on the

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4th day of July, A.D., 1935, or at any other time or times alleged in said petition; or what amount of water, if any, the plaintiff, at said time or any other time alleged in said petition, diverted from its said reservoir into Provo River; or what amount of water, if any, the plaintiff, from its said reservoir, commingled with the waters of Provo River.

3. That no facts are alleged in said petition from which it can be ascertained or determined from what water of the plaintiff, if any, the defendant, T. F. Wentz, deducted more than four (4) per cent, or from what waters the said T. F. Wentz made any deductions whatsoever, or what the amount of said deductions were; neither can it be ascertained or determined from said petition where said deductions were made, or from what quantities of water said deductions were made, or what the amount or quantity of water the plaintiff has lost by, or on account of said alleged deductions.

4. That no facts are alleged in said petition from which it can be ascertained or determined what amount of water, if any, the plaintiff had, or should have had, which reached the point of Provo River designated in said petition as Heiselt's Dam, or if the plaintiff had any water, or was entitled to any water, which did reach, or which should have reached said Heiselt's Dam, or what deductions, if any, said Commissioner had made from said water.

5. That no facts are alleged in said petition from

which it can be ascertained or determined that the Commissioner, T. F. Wentz, has diverted any of plaintiff's water to other water users upon said Provo River, or that the said Commissioner has failed to divert to the plaintiff any water which the plaintiff is entitled to, or that said Commissioner has done other acts or things, or failed to do any other acts or things, from which it can be ascertained or determined how, when or in what manner said Commissioner has been guilty of violating or failing to enforce, according to law, the decree in said cause.

6. That while it is alleged in said petition that the plaintiff co-mingled certain of its storage waters from its reservoir, at the head of Provo River, with the waters of Provo River, no facts are alleged in said petition from which it can be ascertained or determined what the quantity of said waters was, or when the plaintiff so co-mingled said waters, or what waters, if any, the Commissioner failed or refused to divert to the plaintiff from said co-mingled waters; and no facts are alleged in said petition from which it can be ascertained or determined that the Commissioner has done or failed to do any thing which would prevent all of the plaintiff's storage water from arriving at the aforesaid Heiselt's Dam, the plaintiff's point of diversion on said Provo River.

7. That no facts are alleged in said petition from which it can be ascertained or determined that the waters, which plaintiff alleges were co-mingled with the waters of Provo River, remained co-mingled with the waters of Provo River until said waters

reached the aforesaid Heiselt's Dam, or that any waters, at the times mentioned in said petition, either from the natural flow of Provo River or from plaintiff's storage reservoir, reached said Heiselt's Dam, and if so, what the quantity or amount of said water was and how much of said waters the plaintiff was entitled to.

8. That while it is alleged in said petition that the Commissioner, T. F. Wentz, deducted an amount of water from plaintiff's storage water, in an amount which is equal to more than four (4) per cent of the same, no facts are alleged in said petition from which it can be ascertained or determined when said deductions were made, what the amount of said deductions were, what said Commissioner did with the water so deducted, or any other facts from which it can be ascertained or determined how, why, when or in what manner said Commissioner has been, or is guilty of violating any provisions of the decree in said cause.

9. That no facts are alleged in said petition from which it can be ascertained or determined that the Commissioner has wrongfully diverted any of plaintiff's water, or if so, to whom, or when he so diverted said water, or what the quantity thereof was.

10. That no facts are alleged in said petition from which it can be ascertained or determined how much of plaintiff's storage water was lost by evaporation and seepage from the time the same was placed in Provo River, at the head thereof, until it reached the aforesaid Heiselt's Dam; and no facts are

alleged in said petition from which it can be ascertained or determined whether or not all of plaintiff's storage water was lost by evaporation or seepage, or what the percentage of loss, if any, there was, or what water of the plaintiff's, if any, reached, or would have reached, the aforesaid Heiselt's Dam had the same not been diverted wrongfully by the Commissioner, T. F. Wentz.

11. That no facts are alleged in said petition from which it can be ascertained or determined what the plaintiff is seeking to have the Commissioner do, or fail to do, in order to protect the plaintiff's rights under the decree in said cause, or what rights of the plaintiff have been violated by said Commissioner.

WHEREFORE, said defendants pray that the plaintiff's petition be dismissed.

Robinson Robinson
Robinson Robinson
Attorneys for Defendants

Received a copy of the foregoing Demurrer this 19th day of August, A.D., 1935.

a. v. Wathen
Attorneys for Plaintiff